

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MICHAEL A. LEON,)	2 CA-CV 2011-0154
)	DEPARTMENT A
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
SECURAPLANE TECHNOLOGIES,)	Appellate Procedure
INC.; JANICE WILLIAMS; LORRIE)	
GUZEMAN; BLANE BOYNTON; and)	
DR. MICHAEL BOOST,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20091791

Honorable Jan E. Kearney, Judge

AFFIRMED

Michael A. Leon

Tucson
In Propria Persona

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
By Tibor Nagy, Jr. and F. David Harlow

Tucson
Attorneys for Defendants/Appellees

H O W A R D, Chief Judge.

¶1 Appellant Michael Leon appeals from the trial court's grant of summary judgment in favor of Securaplane Technologies, Inc., Janice Williams, Lorrie Guzeman,

Blane Boynton, and Dr. Michael Boost (collectively “Securaplane”). On appeal he argues the trial court erred by finding no issue of material fact on his claims of invasion of privacy and defamation. He also contends the court committed various abuses demonstrating bias against him and erred procedurally. Because Leon raises no meritorious issues, we affirm and sanction Leon for filing a frivolous appeal.

Factual and Procedural Background

¶2 We view the facts and reasonable inferences from those facts in the light most favorable to the party against whom summary judgment was granted. *See Andrews v. Blake*, 205 Ariz. 236, ¶ 12, 69 P.3d 7, 11 (2003). In his fourth amended complaint, Leon alleged invasion of privacy, and slander and defamation against his former employer, Securaplane, and several Securaplane employees. Securaplane moved for summary judgment, which the trial court granted after a hearing. The court determined Leon had failed to comply with the requirements of Rule 56, Ariz. R. Civ. P., and had not submitted admissible evidence supporting his allegations or produced facts supporting claims for defamation and invasion of privacy based on publicity given to private life and false light. It also found several of the claims either barred by the statute of limitations or absolutely privileged. After the court entered a final judgment, this appeal followed.

Summary Judgment

¶3 Leon contends the trial court erred in granting summary judgment on his claims of invasion of privacy and defamation. We review de novo a grant of summary judgment. *Valder Law Offices v. Keenan Law Firm*, 212 Ariz. 244, ¶ 14, 129 P.3d 966, 971 (App. 2006).

¶4 Summary judgment is required where there is “no genuine issue as to any material fact.” Ariz. R. Civ. P. 56(c)(1). Our supreme court has interpreted this rule to mean that, “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense,” summary judgment should be granted. *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

¶5 In his opening brief, Leon fails to discuss or effectively rebut the various grounds for the trial court’s decision. Therefore, any such argument is waived. *See Sholes v. Fernando*, 228 Ariz. 455, ¶ 16, 268 P.3d 1112, 1118 (App. 2011). Additionally, Leon does not identify clearly the incidents he believes constitute invasion of privacy or defamation. He mentions various factual allegations throughout his brief including: “dissemination of private medical history information”; Securaplane “managers informing employees of past criminal record”; managers circulating a birthday card against his wishes; a manager incorrectly telling employees Leon had a bunion; employees circulating an e-mail “lookout” poster of Leon; managers “advis[ing] employees that [Leon and his son] were dangerous and hir[ing] police officers as security for [four] months”; and labeling Leon as a serial killer. However, Leon does not provide any citations to the record of evidence supporting these allegations as required by Rule 13(a)(4) and (a)(6), Ariz. R. Civ. App. P. *See Delmastro & Eells v. Taco Bell Corp.*, 228 Ariz. 134, n.2, 263 P.3d 683, 686 n.2 (App. 2011). And citation to an appendix “does not substitute for a citation to the record as it is numbered pursuant to Rule 11(a)(2)[, Ariz. R.

Civ. App. P.]” *Delmastro & Eells*, 228 Ariz. 134, n.2, 263 P.3d at 686 n.2. Thus, Leon’s argument is waived. *See id.*

¶6 Leon also alleges the trial court made factual errors in its ruling on the motion for summary judgment. However, even if he is correct that the court erred, the issues Leon identifies are not material facts, do not affect the merit of his claims, and do not cure the deficiencies in his opening brief.

Judicial Bias

¶7 Leon contends the trial judge should have recused herself from his case, alleging she had corruption charges brought against her and is biased against single fathers. He also contends the judge showed prejudice by not considering “tapes” Leon had recorded.¹

¶8 Bias is defined as “a hostile feeling or spirit of ill-will . . . towards one of the litigants.” *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 29, 234 P.3d 623, 631 (App. 2010), quoting *State v. Perkins*, 141 Ariz. 278, 286, 686 P.2d 1248, 1256 (1984). In order to establish bias a party must show by a preponderance of the evidence that a specific cause of bias or prejudice exists outside of the judge’s participation in the current case. *Id.* And ruling against someone does not demonstrate judicial bias. *Id.* ¶ 30.

¹Leon appears to assert that the trial court’s failure to consider the tapes was a separate error and that he “has a right to proceed to trial for a jury to decide the matter.” However, he cites to no authority to support this argument and, thus, it is waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s failure to develop and support argument waives issue on appeal).

¶9 Leon did not object on this basis in the trial court. He has, therefore, waived the issue on appeal. *See id.* Moreover, as external evidence in support of his claim he provides only two citations to internet pages which do not function and one to a news article which does not contain specific information on any judge. Because neither of these was presented to the trial court, we will not consider these citations on appeal, *see GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990), and no evidence supports Leon’s claim that the trial court was biased.

Procedural Errors

¶10 Leon further argues the trial court did not permit him to argue his motion to compel or to finish his argument opposing Securaplane’s motion for summary judgment. A trial court has a duty to control his or her courtroom and also has discretion in doing so. *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 33, 977 P.2d 807, 813 (App. 1998).

¶11 Leon did not object on this basis in the trial court and has waived the argument on appeal. *City of Tempe v. Fleming*, 168 Ariz. 454, 456, 815 P.2d 1, 3 (App. 1991) (“arguments not made at the trial court cannot be asserted on appeal”); *see also Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) (purpose of requiring party to make specific objection in trial court gives court opportunity to rule before appellant claims error on appeal). Moreover, the record reflects that the court permitted Leon substantial time for argument on both issues within the time allotted and had informed both parties that each would have twenty-five minutes for both issues. Imposing time limitations falls within the trial court’s duty to control the courtroom and was not an abuse of discretion. *See Brown*, 194 Ariz. 85, ¶ 33, 977 P.2d at 813.

¶12 Leon alleges Securaplane’s responses to his “motion for leave to file [a] motion to compel and motion to compel w[ere] untimely.” Because Leon does not request any relief and cites to no authority, he has waived this argument. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s failure to develop and support argument waives issue on appeal).

Sanctions

¶13 Securaplane argues Leon’s appeal is frivolous and should be dismissed pursuant to Rule 25, Ariz. R. Civ. App. P. It requests attorney fees as a sanction for the frivolous appeal.

¶14 When an appeal is frivolous, we may impose “reasonable penalties or damages (including contempt, withholding or imposing of costs, or imposing of attorneys’ fees) as the circumstances of the case and the discouragement of like conduct in the future may require.” Ariz. R. Civ. App. P. 25. We have held an appeal to be frivolous based upon an appellant’s “failure to raise any reasonable issue regarding a meritorious claim.” *Johnson v. Brimlow*, 164 Ariz. 218, 222, 791 P.2d 1101, 1105 (App. 1990). Leon has failed to challenge the trial court’s basis for its decision and has not raised any arguments of merit. Accordingly, we will award some portion of Securaplane’s attorney fees as a sanction upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* Ariz. R. Civ. App. P. 25.

Conclusion

¶15 For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of Securaplane.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge